



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 3RD DAY OF FEBRUARY 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MRS JUSTICE GEETHA K.B.

CRIMINAL APPEAL NO.100370 OF 2022 (A)

BETWEEN:

STATE OF KARNATAKA
REP. BY THE POLICE INSPECTOR,
WOMEN POLICE STATION, DHARWAD, DIST. DHARWAD.
THROUGH ADDL. STATE PUBLIC PROSECUTOR,
ADVOCATE GENERAL OFFICE,
HIGH COURT OF KARNATAKA, DHARWAD BENCH-580011.

...PETITIONER

(BY SRI.PRAVEEN Y. DEVAREDDIYAVARA, HCGP)

AND:

MAHANTESH S/O. SHANKREPPA NAYAKAR,
AGE: 22 YEARS, OCC. FARMER,
R/O. HULAMBI, NEAR FOREST NAKA,
TQ. KALAGHATAGI, DIST. DHARWAD-581204.

...RESPONDENT

(BY SRI.VISHWANATH L. HEGDE, AMICUS CURIAE)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(1) AND (3) OF CR.PC., PRAYING TO GRANT LEAVE TO APPEAL AGAINST THE JUDGMENT AND ORDER OF ACQUITTAL DATED 28.10.2021 PASSED BY THE II ADDL DISTRICT AND SESSIONS AND SPECIAL JUDGE, DHARWAD IN SPECIAL S.C.NO.41/2019 AND TO SET ASIDE THE JUDGMENT AND ORDER OF ACQUITTAL DATED 28.10.2021 PASSED BY THE II ADDL DISTRICT AND SESSIONS AND SPECIAL JUDGE, DHARWAD IN SPECIAL S.C.NO.41/2019 AND TO CONVICT THE RESPONDENT/ACCUSED FOR THE OFFENCES PUNISHABLE UNDER SECTION 376 OF IPC AND UNDER SECTION 6 OF POCSO ACT, IN THE INTEREST OF JUSTICE AND EQUITY.





THIS APPEAL, COMING ON FOR FURTHER HEARING, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
AND
THE HON'BLE MRS JUSTICE GEETHA K.B.

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ)

1. The State is in appeal, being aggrieved by the judgment and order dated 28.10.2021 passed by the Court of II Additional District and Sessions Judge and Special Judge, Dharwad, in Spl.S.C. No.41/2019, whereby the learned Sessions Judge has acquitted the accused of the offence punishable under Section 376 of the Indian Penal Code (IPC for short) and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act, for short).

2. We have heard Sri. Praveena Y. Devarediyavara learned High Court Government Pleader for the appellant/State and Sri. Vishwanath L. Hegde, learned Amicus Curiae for the respondent. Perused the evidence and material on record.

3. In brief, it is the case of prosecution that about 4 months prior to 23.07.2019, the accused befriended the victim girl, a minor aged below 18 years and when there was no one in the house of the victim, committed penetrative sexual assault on



her, in spite of her resistance, consequent to which she became pregnant and hence committed the charged offence.

4. In order to establish the guilt of the accused, the prosecution got examined 19 witnesses and got marked 34 documents and M.Os.1 to 9. The defence of the accused was one of total denial.

5. Appreciating the oral and documentary evidence on record, the learned Special Judge by assigning reasons, acquitted the accused vide impugned judgment, which is under challenge.

6. The first informant is the victim's mother-PW1. The complaint is marked as Exhibit P.13. In her complaint, she has stated that when her daughter was aged about 10 years, she had sent her to her sister's house at Hubli for studies, wherein her daughter studied till 8th standard and thereafter, she came and started residing with her. Since 3 years she is residing with her and for the last two months, she is staying in a hostel at Good News Training Center, Kalghatagi. About 15 days prior, her daughter telephoned and informed that she is not keeping well and therefore, she was brought to the house. They noticed that her daughter had developed some boils on her back and



therefore on 19.07.2019 she was taken to KIMs Hospital, Hubli, wherein after examination, the doctor informed them that her daughter is 3 months pregnant. In Exhibit P.13 it is stated that when the complainant enquired with her daughter, she informed that about 3 months prior, the accused came to the house when no one was present and spoiled her and being scared, she did not inform the matter to any one.

7. P.W.13-the doctor working at KIMS Hospital, Hubballi has deposed that on 19.07.2019 at about 8.20 p.m., the victim girl along with her aunt had come to the hospital for terminating the pregnancy. Hence, she sent MLC intimation to the police. She noticed that the victim was 19 weeks pregnant and therefore opining that the pregnancy could be terminated, she caused abortion and collected the foetus. She has further stated that, police visited the hospital and recorded the statement of the victim.

8. P.W.12-the WPSI of Dharwad Women's Police Station has deposed that on 23.07.2019, on receiving the MLC intimation from KIMS Hospital, Hubballi, she went to the hospital to record the statement of the victim. Since the victim was not speaking properly, she recorded the statement of her mother-P.W.1 and



took her thumb impression and then recorded the statement of the victim as well. Thereafter, she returned to the police station and handed over the investigation to the I.O.

9. P.W.9 has deposed that on 23.07.2019 at about 11.30 p.m., she received the statement of C.W.1 (P.W.1) from C.W.24 (P.W.12) on the basis of which she registered Crime No.33/2019 and issued the FIR to the jurisdictional Court. She has further stated that the complainant took her to the spot, wherein she conducted a mahazar and also got prepared the sketch and then handed over the investigation to C.W.26 (P.W.18).

10. P.W.18-the WPI has deposed about filing requisition to the Court for submitting the foetus, arresting the accused on 26.07.2019 and conducting his medical examination. He has stated that on the same day he produced the accused and victim before the learned Magistrate. The Doctor submitted the foetus before the Court, collected the blood samples of the victim as well as the accused and after packing and sealing it, he sent it to FSL through C.W.14 for DNA examination. He has further stated that C.W.14 handed over the sealed articles to FSL on 30.07.2019 and returned with an acknowledgment on



31.07.2019 for having submitted the articles to the FSL. She has handed over the further investigation to C.W.27 (P.W.19), who filed the charge-sheet in the case.

11. It is the specific case of the prosecution that the victim was a minor aged about 16 years at the time of incident and about three months prior to the date of lodging of the complaint, the accused had befriended her, visited her house when no one was present and committed penetrative sexual assault on her, without her consent.

12. In order to establish that the victim was a minor aged below 18 years, the prosecution has placed reliance on the school register and the age certificate issued by P.W.7, Headmaster of the Government Higher Primary School Mangalagatti, where the victim studied from 3rd standard to 8th standard. As per Ex.P.9, the certificate issued by P.W.7, date of birth of the victim is 15.03.2003. Further, from the said witness, Exs.P.10 and P.11 i.e., original school register and the relevant portion and the attested copy of relevant portion of the school register were marked.



13. If the date of birth mentioned in the above documents is taken into consideration, then the victim was aged just above 16 years as on the date of lodging the complaint and commission of the alleged offence. However, the defence has seriously disputed the said documents, placing reliance on the evidence of the victim, her mother and brother. It is contended that P.W.1 has categorically stated in her cross-examination that the victim was aged about 20 years and also stated that she is not aware as to who gave the date of birth of the victim at the time of her admission to school. It is also contended that as per the victim, her date of birth is 06.01.2002 and therefore there is discrepancy in the date of birth. Hence, it is contended, the case of the prosecution that the victim was a minor aged below 18 years is not established beyond reasonable doubt.

14. The learned Additional SPP would contend that the evidence of P.W.7 has to be accepted because he has furnished the school register along with the certificate, which confirms the date of birth of the victim and the said entry was made in the school register at a point of time when there was no controversy. Hence, contended the same has to be accepted.



15. The learned Trial Judge based on the evidence of P.W.7 and the documents at Exs.P.9 and P.11 has come to the conclusion that the prosecution has proved that the date of birth of victim is 15.03.2003 and therefore, she was below 18 years as on the date of offence.

16. Having carefully perused the material on record with regard to the evidence adduced for proving the age of the victim girl, we find that there is no consistency in the evidence adduced by the prosecution. As per prosecution, the date of birth of the victim is 15.03.2003. P.W.7, the Headmaster has stated that the victim studied in the school from 3rd standard to 8th standard and on the basis of the transfer certificate, he has made an entry regarding the date of birth in the register. Admittedly, the copy of the transfer certificate is not produced and marked. It is not forthcoming as to in which school the victim studied from 1st standard. Her mother examined as P.W.1 in the cross-examination has stated that the victim was 20 years. She has also stated that she is not aware as to who gave the date of birth when the victim was admitted to the school. According to P.W.3-victim's father, he is not aware about the date of birth of the victim. He has stated that the date of birth was furnished by



victim's mother. Admittedly, the birth certificate or the SSLC marks card of the victim has not been furnished. The medical examination to ascertain the age of the victim is also not conducted. The school records pertaining to the victim wherein she studied at the first instance is not forthcoming. The transfer certificate on the basis of which the entry regarding the date of birth was made in the school register is also not produced and marked. Hence, it cannot be held that the prosecution has established that the victim was a minor as on the date of commission of the offence.

17. Be that as it may, it is the case of prosecution that the accused has committed penetrative sexual assault on the victim, in spite of her resistance. However, in this case victim has completely turned hostile and denied the case of prosecution. Even P.W.1, the first informant, none other than the mother of the victim, P.W.3-Father of the victim, P.W.4-brother of the victim, P.W.6-grandmother of the victim, P.W.8-Aunt of the victim and P.W.5-neighbor of the victim have turned hostile and not supported the case of prosecution. There is nothing worthwhile elicited from their cross-examination, which would help the prosecution case to establish its case.



18. The learned Additional SPP contended that in this case, as per DNA report-Ex.P.28, accused is the biological father of the victim's child and therefore, it is proved that he is responsible for the victim to become pregnant. He contended that the reasons assigned by the Trial Court to discard the said DNA report is not in accordance with law. He contended that the DNA report is proved through the evidence of P.W.15 and P.W.17 and blood samples of foetus is matched with the blood samples of victim and accused.

19. The learned Trial Judge while appreciating the evidence with regard to DNA report, has held that there is no evidence produced by the prosecution as to how the foetus and blood samples of victim and accused were stored and carried from Dharwad to Bengaluru and the evidence of witnesses is not supported and corroborated with the evidence of victim, her parents, panchas and relatives of victim.

20. In the case on hand, P.W.13, the doctor terminated the pregnancy of the victim and collected the foetus. P.W.15 is the doctor who collected the blood samples of the victim and accused on 29.07.2019 in the presence of the learned Magistrate. The said samples were forwarded to the FSL by



P.W.18 through a police constable-C.W.14. The samples were received by the Scientific Officer, FSL-P.W.17 on 30.07.2019. After conducting the DNA examination, he issued the DNA report-Ex.P.28.

21. As per Ex.P.28, 'the DNA profile result of the foetus sent in Item No.3 is matching with the DNA profile result of xxxxx (name of victim) and xxxxx (name of accused), sample blood sent in Item Nos.1 and 2 respectively'. Therefore, the sample blood sent in Item No.1 is included from being the biological mother and sample blood sent in Item No.2 is included from being the biological father of foetus sent in Item No.3.

22. The learned Additional SPP contended that the proper procedure was followed in collecting and sending samples to the FSL and in view of the FSL report, accused being the biological father of the foetus, the prosecution has proved beyond doubt that he has committed the offence.

23. Even though the blood samples and the foetus were collected on 29.07.2019 and sent immediately to the lab, which was received by P.W.17 on 30.07.2019, we find from the evidence of P.W.17 that he conducted the examination between



07.05.2020 to 20.08.2020, which is nearly after 10 months from receiving the sample. As observed by the learned Sessions Judge, it is not forthcoming from the evidence of P.W.18 as to where and how the sample was kept before it was sent to the lab. The Constable i.e., C.W.14 who carried the samples to the FSL is also not examined. Even though P.W.17 has stated in the cross-examination that the blood sample can be preserved for 2-3 years, but at the same time, he has stated that it has to be preserved in a proper manner. The victim herself having denied the case of prosecution and failure on the part of the prosecution, to convincingly establish that she was a minor as on the date of alleged offence, it is not safe to convict the accused for the charges, which is serious in nature. The findings recorded by the Trial Court, to acquit the accused do not suffer from any illegality or perversity. The judgment of acquittal would reinforce the presumption of innocence.

24. For the aforesaid reasons, we proceed to pass the following:

ORDER

Appeal fails and accordingly dismissed.



Learned Amicus Curiae, Sri Vishwanath L Hegde is entitled for a honorarium of ₹.10,000/- (Rupees Ten Thousand Only), which shall be paid by the High Court Legal Services Committee, Dharwad.

Sd/-
(MOHAMMAD NAWAZ)
JUDGE

Sd/-
(GEETHA K.B.)
JUDGE

Kmv upto para 6
SH
CT:PA
List No.: 1 Sl No.: 14